

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 08**

SIFCO INDUSTRIES, INC.¹

Employer

and

Case 08-RC-257944

**INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

SIFCO Industries, Inc. (Employer) manufactures easement specialty equipment for the utility industry at its Cleveland, Ohio facility (Cleveland facility). The International Brotherhood of Boilermakers (Petitioner) seeks to represent a unit of all full-time hourly employees within the forge department, grind department, heat treat department, maintenance department, saw department, as well as hot and cold inspectors, mag operators, and mag operators/NDT Level II, who physically work at the Cleveland facility, excluding all guards, salaried employees, office clerical employees and employees covered by other collective bargaining agreements. There are approximately 97 employees in the unit sought by Petitioner. The parties have stipulated, and I find, that the agreed upon unit set forth above is appropriate for purposes of collective-bargaining.

A hearing was held telephonically on May 4, 2020,² before a hearing officer of the National Labor Relations Board (the Board). The only issue presented in this matter, as discussed in more detail below, is how and when the election should be conducted. Election voting method is not a litigable issue at a pre-election hearing, but in light of the challenges caused by the COVID-19 pandemic, I allowed the parties to present witness testimony³ concerning the election voting method in this case, and allowed them to orally argue their positions on that issue. I have carefully considered the record evidence, as well as the positions and arguments presented by the parties on this single issue. For the reasons discussed below, I find that a prompt mail ballot election is appropriate given the extraordinary circumstances presented by the COVID-19 pandemic.

¹ The Employer's name appears as amended at hearing and on Board Exhibit 2.

² Hereinafter all dates occurred in 2020, unless otherwise noted.

³ Citing to Section 102.66(g)(1) of the Board's Rules and Regulations and *NCR Corp.*, No. 07-RC-167851 (2016), the Petitioner, at hearing, objected to the Employer being allowed to offer witness testimony in support of its position that a manual ballot election was appropriate. The hearing officer overruled the Petitioner's objection and permitted the testimony. As I find that a mail ballot is appropriate consistent with the Petitioner's position, there was no prejudice to the Petitioner by permitting the Employer to introduce witness testimony at the hearing.

I. FACTS

1. Federal, State, and Local response to the emerging COVID-19 pandemic.

To begin, I take administrative notice of the pandemic health situation that exists in the United States, and continues to affect the way that individuals, businesses, organizations, and governments conduct their daily operations. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States government.⁴ The CDC states:

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).

Importantly, “[m]ore recently the virus has also been detected in asymptomatic persons.”⁵

To combat the spread of the virus, the CDC issued recommendations including avoidance of gatherings of more than ten people, the use of cloth face coverings and adherence to social distancing, among other recommendations. The CDC further states:

[a]lthough the virus can survive for a short period on some surfaces, it is unlikely to be spread from domestic or international mail, products or packaging. However, it may be possible that people can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.⁶

To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises the public to “wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol” after collecting mail from a post office or home mailbox.⁷

On March 9, Ohio Governor Mike DeWine declared a state of emergency by issuance of Executive Order 2020-01D in response to the rapidly spreading novel coronavirus. Two days later, City of Cleveland Mayor Frank Jackson declared a state of civil emergency for Cleveland, Ohio due to the pandemic, which he has since extended through May 31. Furthermore, as a result of community spread of COVID-19 seen in other parts of the United States, Ohio Department of Health Director Amy Acton (Director Acton) issued a March 22 “Stay At Home Order” requiring, *inter alia*, that: (1) all individuals living in the State of Ohio at the time of the Order stay at home or at their place of residence except as permitted in the Order; (2) all non-essential business and operations must cease; (3) the public refrain from gathering in groups larger than 10 people; and

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

(4) all non-essential travel cease, again with limited exceptions. Shortly thereafter, Director Acton issued Orders closing facilities that provide childcare services as well as K-12 schools.

On April 30, Director Acton issued her “Stay Safe Ohio Order” (Stay Safe Ohio), the State of Ohio’s plan for a phased re-opening of its economy. Stay Safe Ohio outlined permitted re-opening dates for certain industries that had previously been ordered to cease operations, with some industries being allowed to re-open as early as May 4. However, Stay Safe Ohio still required individuals living within the State of Ohio to remain at home or their place of residence, subject to the exceptions noted in the Order, and prohibited the gathering of more than ten people unless otherwise exempted. Moreover, and subject to certain exceptions, businesses that were re-opening pursuant to Stay Safe Ohio, as well as businesses that remained open as essential businesses, had to comply with Stay Safe Ohio’s facial covering and social distancing requirements.⁸

On May 20, 2020, Director Acton issued an Order that rescinded and modified portions of Stay Safe Ohio. It rescinded the portion of Stay Safe Ohio requiring Ohioans to stay at home or their place of residence and lifted most travel restrictions.⁹ That same day, Director Acton issued an Urgent Health Advisory, “Ohio Protecting Ohioans.” While Ohioans are not required to stay at their place of residence, the Advisory recommended that Ohioans stay home as much as possible to prevent the spread of COVID-19.¹⁰ Bans on most gatherings of groups larger than 10 people and social distancing and facial covering requirements for businesses remain in effect.

2. The Employer’s operation and its response to the COVID-19 pandemic.

The Employer is a small publicly-traded corporation that operates a forge with in-house processes such as open and closed die forging and heat treatment machining that services the aerospace, defense, and energy markets. The only facility involved herein is located in Cleveland, Ohio in Cuyahoga County. Currently, some petitioned-for employees work 10-hour shifts, four days per week, while others work five 8-hour shifts per week. In addition to its employees, the Employer has approximately 10 third-party companies/suppliers who provide essential services to the Employer that visit its facility at differing intervals, some visiting more frequently than others. All employees and most visitors must use the front entrance of the facility when arriving to work; a minority of visitors/suppliers will enter the facility in a shipping/receiving area.

The Employer has implemented several protocols and policies in response to the coronavirus spread. Initially, upon reviewing Director Acton’s March 22 Stay at Home Order, the Employer’s management team determined that it was considered an essential business under the Order. Thus, the Employer has remained open through the Stay at Home Order, and the petitioned-for employees have continued working. The Employer requires its employees, as well as visitors, to wear facial coverings on its premises, except for employees who are not required to do so for workplace safety reasons. In order to be compliant under Director Acton’s orders, the Employer

⁸ <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Responsible-Protocols/>

⁹ Under the Order, individuals who have tested positive for COVID-19, are presumptively diagnosed with COVID-19, or are exhibiting symptoms of COVID-19 are still prohibited from entering the State of Ohio, unless they are entering for medical care or are a permanent resident.

¹⁰ I take administrative notice of Acton’s May 20 Order and Advisory, which issued after the close of the hearing. See <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/news-releases-news-you-can-use/new-public-health-orders>

has begun enforcing social distancing guidelines as much as practicable.¹¹ If meetings must occur, the Employer takes measures to reduce the amount of contact among participants, including keeping participation below the 10-person threshold, distributing individual writing utensils so employees are not sharing, arranging the room so that all participants can maintain a six-foot distance from one another, and disinfecting and sanitizing all surfaces before and after the meeting. A significant portion of the corporate staff has begun working remotely.

The Employer has further implemented plans and policies to limit, as much as possible, coronavirus exposure in the workplace. Temperature checks are mandated for all employees and visitors, usually by use of a non-contact thermometer by a guard stationed behind a plexiglass barrier at the front entrance to the facility. If an employee or visitor registers a temperature greater than 100 degrees, that person will be denied entrance to the facility and will be asked not to return without proper documentation from a physician. That individual would also need to remain fever-free for 72 hours without the use of medication before being allowed to return to the facility. Temperature checks also take place in the shipping and receiving area. Visitors must complete a COVID-19-related questionnaire upon arrival at the facility, and are required to wear a facial covering. If an employee becomes sick at work, or misses work due to illness, the Employer requires a physician's note before that employee can return to work. Additionally, postings are maintained throughout the facility reminding employees and visitors to abide by proper hygiene guidelines. The Employer's third-party cleaning service, in addition to its cleaning staff, disinfects common areas and commonly-touched surfaces. Furthermore, hand sanitizer and disinfecting wipes have been placed at all high-touch point areas including clocking stations, the front entrance, hallways, printers, etc.

As of the hearing date, the Employer was not aware of any employees, or any members of an employee's family, who have contracted COVID-19. Of the approximately 97 employees in the petitioned-for unit, 10 are currently on an approved leave of absence from work, including six employees who have taken approved leave pursuant to the Families First Coronavirus Response Act (FFCRA). Additionally, 26 of the petitioned-for employees have been approved for intermittent leave pursuant to FMLA, with 14 of those having been approved for leave under the FFCRA.

The Employer also has a pandemic preparedness plan that addresses many issues related to the ongoing COVID-19 pandemic, one of which is a situation where the Employer would encounter a COVID-19 case among its workforce. If posed with a potential exposure at the facility, the Employer will conduct contact tracing to determine who among its workforce was potentially exposed, which could potentially lead to multiple individuals entering a self-quarantine in accordance with the CDC and the Ohio Department of Health mandates. If there is a positive COVID-19 case among the Employer's workforce, a portion of the workforce may be required to self-quarantine, again in accordance with the CDC and the Ohio Department of Health mandates.

¹¹ The Employer has spray painted six-foot markers in different areas of the facility. It has also placed signage around the facility to make all employees and visitors aware of the social distancing requirements. In certain areas of the facility where employees are unable to maintain the six-foot spacing, the Employer requires those employees to wear facial coverings or wear a plexiglass-like face shield.

II. POSITION OF THE PARTIES

Petitioner argues that this election should be conducted by mail ballot due to the ongoing risks caused by the COVID-19 pandemic. According to Petitioner, the Employer's business is such that not all employees are able to use face coverings throughout the day, and coupled with the potential for asymptomatic carriers of the coronavirus being present in the workforce, the Employer cannot guarantee the safety of all manual election participants. Moreover, a suspected or confirmed COVID-19 case in the workplace near the election date could result in a number of voters being quarantined without the ability to vote in the election. Similarly, Petitioner argues that a manual election could potentially disenfranchise several voters as there are currently 10 employees in the petitioned-for unit on leave and not working, with several other employees being approved for leave under the FFCRA that might have to use leave at any moment. Furthermore, due to restrictions on entering the facility for individuals who have traveled to certain locations, or for individuals who may register a temperature of 100 degrees or higher, potential voters may be denied entry on the day of the election.

Ultimately, Petitioner argues that the Employer cannot guarantee the safety of all participants in a manual election at its facility, irrespective of how detailed a plan the Employer has conceived. It cites to the Employer's COVID-19 Plant Entry Policy which states that "[f]ewer people on site means greater safety for all of us." In arguing for the efficacy of a mail ballot during these extraordinary times, Petitioner highlights the number of confirmed COVID-19 cases in the State of Ohio, and Cuyahoga County, as well as the number of confirmed deaths. Lastly, in the case of renewed regulation due to an outbreak in the Cleveland area, or confirmed cases at the Employer's facility, Petitioner raises the potential for a last-minute cancellation and corresponding delay of the manual election—or the potential disenfranchisement of voters if the manual election were to proceed.

Conversely, the Employer argues that a manual election can proceed safely at its facility, thus making the historically-preferred manual election still appropriate today.¹² In order to conduct a safe manual election, the Employer has proposed using a large conference room allowing for all participants to maintain appropriate social distancing during the election. Additionally, the Employer is willing to provide all necessary personal protective equipment to all participants in order to comply with government-imposed facial covering requirements, and is willing to install clear plastic barriers between election participants. Moreover, through the use of proper sanitizing and disinfecting, screening for symptomatic employees and visitors, and its commitment to assuring proper hygiene is being undertaken at its facility, the Employer argues that it is well-suited to ensure a safe environment for this election.

Lastly, the Employer raises additional concerns about mail ballot elections and the appropriateness of a mail ballot election in this case. First, the Employer cites to potential safety hazards and virus transmission through the handling of potentially infected mail. Next, the Employer argues that the specific circumstances found appropriate for the use of mail ballot voting

¹² Initially at hearing the Employer indicated its willingness to consider a mixed manual-mail ballot-like election arrangement whereby the Employer would submit, at a pre-determined time before the election, a list of employees eligible to vote by mail due to their absence from the facility. However, during closing argument, the Employer retreated from that position and argued that only a manual ballot election is appropriate here.

methods as announced by the Board in *San Diego Gas & Electric*¹³ are not appropriate here. In that regard, petitioned-for employees are not scattered due to their geographic work locations or due to their work schedules, and there are no strikes, pickets, or lockouts occurring at the Employer's facility that would interfere with a manual election. The Employer also argues that mail ballot elections are only appropriate if they would enhance the opportunity for all to vote, and in its view, that is not the case here. Finally, the Employer argues that mail ballot elections lack the inherent control of a manual ballot election, where the election is supervised by a Board agent who controls the ballots, the voting environment, and the ballot box, and that manual elections maximize voter turnout.

III. ANALYSIS

It is longstanding Board practice that Regional Directors are afforded discretion in determining the method of balloting for representation elections. See *Halliburton Services*, 265 NLRB 1154 (1982); see also *Manchester Knitted Fashions*, 108 NLRB 1366 (1954) (stating that the Regional Director has the discretion to determine the time and place for an election). Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (2) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). A Regional Director's exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned "unless a clear abuse of discretion is shown." *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4. Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in extraordinary circumstances. *San Diego Gas & Electric*, 325 NLRB at 1145; see also NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11301.2.

The Board has already had occasion to apply the guidelines that were outlined in *San Diego Gas & Electric* to the current pandemic. The Board's Order in *Atlas Pacific Engineering Company*, 27-RC-258742 (May 8, 2020), involved the direction of a mail ballot election by the Regional Director for Region 27, notwithstanding the employer's argument that a manual election could be safely accomplished at its facility. The employer requested review of the Regional Director's Decision and Direction of Election, and sought an emergency stay of the directed election. On May 1, the Board granted the emergency stay in order to give it time to consider the matter.

¹³ 325 NLRB 1143 (1998).

Thereafter, on May 8, the Board denied the employer's request for review and lifted the stay of the election. According to the Board:

[i]n finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency's assessment of current COVID-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

Atlas Pacific Engineering Company, 27-RC-258742, fn.1 (May 8, 2020). Due to the current environment caused by the pandemic, the Board found that the Regional Director for Region 27 did not abuse her discretion in relying on the "extraordinary circumstances" language of the Board's decision in *San Diego Gas & Electric* to order a mail ballot.

Given the extraordinary circumstances caused by the spread of COVID-19 that still face the State of Ohio and the entirety of the United States, I find it appropriate to exercise my discretion to direct a mail ballot, the details of which are provided below. Not only do I derive such discretion from extant case law, the Board has specifically emphasized Regional Director's discretion in directing elections during these unprecedented times. On April 1, the Board, through the Office of Public Affairs, issued a press release indicating that beginning April 6, Board-conducted elections would resume after a two-week suspension.¹⁴ According to the press release, "[t]he General Counsel now has advised that appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors." *Id.* Accordingly, in weighing the propriety of resuming elections—a "core" function "to the NLRB's mission"—during these extraordinary and unpredictable times, the Board concluded, with input from the Board's General Counsel, that elections should resume, subject to individual Regional Director's discretion. *Id.* As such, the Board, with the General Counsel's input, has afforded to Regional Directors the discretion, specific to the COVID-19 pandemic, to resume elections in a safe and effective manner, and I choose to appropriately exercise that discretion in this instance.

I have considered the Employer's proffered plan to safely run a manual election at its facility. While I acknowledge the careful consideration paid to this issue by the Employer, there are too many inherent risks with running a manual election during this COVID-19 pandemic that the Employer simply cannot control, especially the risk of voter disenfranchisement. The record establishes that 10 employees in the petitioned-for unit are currently on some form of approved leave of absence. The record further reflects that 14 employees in the petitioned-for unit have already been approved for leave pursuant to the FFCRA. Indeed, both parties acknowledge that a request for FFCRA-related leave could be made at any moment, thus underscoring the fluid nature of our current environment.

¹⁴ See NLRB Resumes Representation Elections (2020), <https://www.nlr.gov/news-outreach/news-story/nlr-resumes-representation-elections>, (last visited May 6, 2020).

Moreover, the policies and protocols implemented by the Employer in response to the pandemic further highlight the potential for voter disenfranchisement or disruption to the election. Should a positive COVID-19 case be confirmed among the Employer's workforce prior to the election, contact tracing could mandate the quarantining—and corresponding disenfranchisement of—any potential voter who came in contact with the confirmed case. Moreover, any employee or visitor, including Petitioner representatives or the Board agent(s) assigned to conduct the election, who cannot meet the requirements of the Employer's visitor questionnaire or who register a temperature of greater than 100 degrees, would be denied entrance to the Employer's facility and would be unable to participate in the election.¹⁵ That scenario may not only result in voter disenfranchisement, but also the last-minute cancellation of the election should the affected person be the Board agent(s) tasked with conducting the election.

The above is not meant to penalize the Employer for instituting necessary, and in some instances required, protocols in an effort to ensure the safety of its employees and visitors. It is certainly no fault of the Employer that this petition was filed during a pandemic that has necessitated the implementation of protocols and policies which, by their very nature, call into question the propriety of manual elections at this time. On the contrary, it is meant to stress the unique and unpredictable nature of this pandemic, and the resultant risks of proceeding to a manual election in these extraordinary times, all of which can be alleviated with a mail ballot election. Voting by mail ballot in this case eliminates any concern that employees, Petitioner representatives, or the Board agent(s) assigned to conduct the election would be denied entry to the Employer's facility on the date of the election. A mail ballot election will allow all petitioned-for employees to opportunity to vote, irrespective of whether they are out of work on an approved leave of absence. The risk that just one positive, or even suspected, COVID-19 case could cause several, or many, potential voters to quarantine and miss their opportunity to vote is negated by a mail ballot election.

The Board recognized in *San Diego Gas & Electric*, supra, that extraordinary circumstances may be cause for a Regional Director to direct voting by mail ballot in situations other than the three outlined by the Board in that decision. What makes the current pandemic truly an "extraordinary circumstance" is the day-to-day uncertainty and rapidly evolving environment in which we find ourselves. As businesses reopen and people around the State of Ohio, and the City of Cleveland, reenter a less-restricted public life, the increased risk of COVID-19 community spread cannot be ignored. Based on the risk factors discussed above, and the continued uncertainty that this pandemic creates, I have determined that voting by mail significantly decreases the risk of voter disenfranchisement as compared to an in-person manual election.

Additionally, the Employer simply cannot guarantee the safety of all those involved in a manual election. A manual election necessarily involves the face-to-face interaction of numerous people. At the pre-election hearing, the Board Agent must meet with Employer and Petitioner representatives, attorneys who may be present, and election observers. During the election, the

¹⁵ Temperature screening, implemented in response to the pandemic, would also deny entry to any voter or participant who may be experiencing an illness unrelated to COVID-19. A temperature of 100 degrees, in a pre-COVID-19 voting environment, would not prevent a voter from accessing the polling site. Now, however, conducting a manual election in the midst of this pandemic not only risks the disenfranchisement of individuals affected by COVID-19, but also those not currently infected with the virus.

Board Agent and observers must check-in approximately 97 potential voters using the same voting list and sharing the same space. The voters must stand in line in order to obtain a ballot to vote, which will be distributed by the Board agent, and will be required to use the same voting booth as every other voter. Voters will ultimately place their ballots in the same ballot box. That ballot box will need to be opened, shown for inspection to all observers at the vote count to ensure no votes were left in the box, and the Board Agent will need to read each vote and tally the ballots with assistance from the observers.

While the above offers a simplified explanation of the processes involved in conducting a manual election, it is offered to show the volume of unavoidable face-to-face interactions made during the course of an in-person election, especially in an election such as this that will likely involve around 100 individuals, possibly more. Given the current information from the CDC that asymptomatic individuals can be a source of transmission of the virus, just one failure to maintain proper social distancing or the use of appropriate personal protective equipment could jeopardize the safety of many people, through no fault of their own. The countless safety hazards involved with conducting a manual election are simply not present with an election conducted by mail, thus making it the safer method of voting at this time.¹⁶

A mail ballot election is also well-suited during these difficult times to continue effectuating the core purposes and policies of the Act. Processing representation petitions and timely conducting elections is central to the Board's mission. The Employer's arguments against the efficacy of mail ballot elections are unavailing. "From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail." See *London Farm Dairy*, 323 NLRB 1057 (1997) (internal citations omitted). Indeed, the Board has previously rejected arguments that mail ballot elections are inherently less secure, and that they would likely result in voter coercion or reduced voter participation. See *San Diego Gas & Electric*, 325 NLRB at 1146; *London Farm Dairy*, 323 NLRB at 1058. While long-standing Board policy favors manual elections, mail ballot elections continue to be an often utilized voting method and continue to have their place in circumstances where manual elections are prohibitively challenging, including the extraordinary circumstances caused by this global pandemic.

Finally, I find unavailing the Employer's argument that a mail ballot election will pose safety hazards to those involved in the process. There is no evidence that mail ballot elections will endanger public health or that people have been infected with the novel coronavirus by the handling of mail. To the contrary, as noted above, the CDC's guidance states that the novel coronavirus "is unlikely to be spread from domestic or international mail, products or packaging." Furthermore, the necessary precautions to avoid potentially being infected by the virus through the mail—hand-washing for 20 seconds or the use of hand sanitizer—are much more manageable than the litany of precautions that would need to be taken to ensure the safety of all participants in a manual election.

For the foregoing reasons, I direct a mail ballot election to be conducted in accordance with the election details discussed below.

¹⁶ Like the Region 27 office, the Region 8 office charged with conducting the election in this matter remains on mandatory telework due to spread of COVID-19 within its jurisdiction. See the Board's rationale cited in *Atlas Pacific Engineering*, *supra*.

IV. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction therein.¹⁷
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. No collective-bargaining agreement covers the employees in the petitioned-for-unit, and no other bar exists to conducting an election.¹⁸
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time hourly employees within the forge department, grind department, heat treat department, maintenance department, saw department, as well as hot and cold inspectors, mag operators, and mag operators/NDT Level II, who physically work at the Cleveland facility, excluding all guards, salaried employees, office clerical employees and employees covered by other collective bargaining agreements.

¹⁷ The parties stipulated in Board Exhibit 2, and I find, that the Employer is an Ohio corporation engaged in the manufacture of easement specialty equipment for the utility industry at its 970 E. 64th St., Cleveland, Ohio location, the sole facility involved herein. During the previous twelve months, the Employer purchased and received at its Cleveland, Ohio facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of Ohio.

¹⁸ The parties stipulated that the petitioned-for unit was previously represented by the International Association of Machinists and Aerospace Workers, District 54 and its Lodge 439 (IAM) for purposes of collective-bargaining. The parties further stipulated, and I find, that IAM disclaimed interest in the unit involved herein by written letter on March 21. Accordingly, and as stipulated by the parties, I find that no collective-bargaining agreement covers the petitioned-for unit. Thus, no employees in the petitioned-for unit are subject to the exclusion language in the unit description language described above.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Boilermakers.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At 4:45 p.m. on June 1, 2020, ballots will be mailed to voters by the National Labor Relations Board, Region 8, from its office at 1240 E. 9th Street, Room 1695, Cleveland, Ohio 44199-2086.¹⁹ Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by June 8, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 8 Office at (216) 522-3715 or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the Region 8 office, 1240 E. 9th Street, Room 1695, Cleveland, Ohio on June 22, 2020, at 2:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 8 office prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the COVID-19 pandemic, I further direct that the ballot count will take place remotely through a video platform, such as iPhone FaceTime, WebEx, Skype, or similar medium, to be determined by the undersigned Regional Director. Additionally, given our future uncertainty caused by the COVID-19 pandemic, and the often in-flux federal, state, and local government regulation of businesses, offices, and the movement of people, I further direct that the aforementioned ballot count date may be postponed should it become necessary to do so.

The parties have agreed, and I conclude, it is appropriate that the Notice of Election and ballots will be in English.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on May 24, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well

¹⁹ The Union has agreed to waive the 10-day requirement for the voter list.

as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by May 28, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

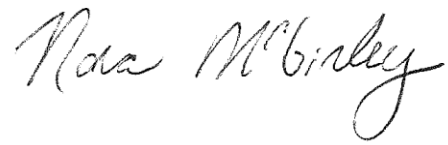
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: May 26, 2020

A handwritten signature in cursive script that reads "Nora McGinley".

Nora McGinley, Acting Regional Director
National Labor Relations Board, Region 8
1240 E. 9th Street, Room 1695
Cleveland, Ohio 44199-2086